

AO 241 (Rev. 09/17)

FEB 01 2022
CLERK, U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY OF PENNSYLVANIA

United States District Court		District: <u>Western District of Pennsylvania</u>
Name (under which you were convicted): <u>DAVID WONTAE Fitzgerald</u>		Docket or Case No.: <u>188DB 2:22cv181</u>
Place of Confinement: <u>BUTLER COUNTY PRISON</u>	Prisoner No.: <u>035835</u>	
Petitioner (include the name under which you were convicted): <u>DAVID WONTAE Fitzgerald</u>	Respondent (authorized person having custody of petitioner) <u>PENNSYLVANIA Parole Board</u> v. Parole Agent, Jennifer Schaeffer Parole Supervisor, Nathan Simon District Director, Robert E. Petrarco	
The Attorney General of the State of: <u>PENNSYLVANIA</u>		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging:
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA Parole Board
1101 S. Front Street, Harrisburg, PA 17104-2519
- (b) Criminal docket or case number (if you know): 188DB (Parole Number)
- (a) Date of the judgment of conviction (if you know): July 01, 2021
- (b) Date of sentencing: 05/26/2021 (Date of warrant to commit and detain)
- Length of sentence: _____
- In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No
- Identify all crimes of which you were convicted and sentenced in this case: violation of condition
#5B: Possession of a Firearm, violation of condition #7
Failure to Abide by imposed curfew
- (a) What was your plea? (Check one)

<input checked="" type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☒ Judge only *violation hearing*

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☐ Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? ☐ Yes ☐ No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

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(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

_____(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☐ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☐ Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No(7) Result: violation hearing: Recommitted as a Technical Probation violator
to a state correctional institution / contracted county jail to
serve 6 months, pursuant to Act 122 of 2012

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(8) Date of result (if you know): January 21, 2021

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☐ No(2) Second petition: ☐ Yes ☐ No(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Double Jeopardy

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I WAS ARRESTED ON 9/17/2020 ON NEW CRIMINAL CHARGES NAMELY POSSESSION OF A FIREARM. I WAS DETAINED BY STATE PAROLE UNTIL THE OUTCOME OF THE CRIMINAL CHARGES. ON 11/30/2020 WARRANT TO DETAIN WAS LIFTED AND ANOTHER WARRANT TO DETAIN WAS LODGED AGAINST ME THE SAME DAY. 12/1/2020, TECHNICAL VIOLATIONS WERE FILED AGAINST ME AND I HAD A VIOLATION HEARING ON THOSE VIOLATION CHARGES. (1/11/2021) BOARD DECISION ON 1/21/2021 TO RECOMMIT AS TPV TO SERVE 6 MONTHS. GOT REARRESTED BY ATF FOR SAME FIREARM AND STATE PAROLE DETAINED ME AGAIN

- (b) If you did not exhaust your state remedies on Ground One, explain why: my public defender that represented me at my detention hearing (6/22/2021) said that she would file administrative relief as long as I remained in Allegheny county. I was transferred the next day to Butler county and was unable to receive assistance from Butler county public defender office. (LEANN KOWELSKI Public defender) that represented me at my detention hearing

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(c) **Direct Appeal of Ground One:**(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why: NO direct Appeal filed(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO:violation of the fifth Amendment

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I AM BEING held and punished twice by the state parole board for the same offense that I was just held, detained and punished for. This case stems from the same case on 9/17/2020 in which I was already detained and punished for. parole agents supporting facts from 9/17/2020 and the new charges state that my charges stem from 9/17/2020. 9/17/2020 I was arrested by swissville police and charged with a firearm with serial number T6091315. The ATF RE-ARREST ME ON 5/26/2021 for charges that stem from 9/17/2020 and charge me with a FIREARM with SAME SERIAL NUMBER T6091315. in both Reports its also SAME MODEL. I AM being punished twice for SAME offense and receiving successive punishment.

(b) If you did not exhaust your state remedies on Ground Two, explain why: My public defender that

represented me at my detention hearing (6/22/2021) said that she would file administrative relief as long as I remained in Allegheny county. I was transferred the next day to Butler county and was unable to receive assistance (LENN KOWALSKI)

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction; did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

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Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : _____

GROUND THREE:Detained Twice for the SAME OFFENSE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I got arrested on 9/17/2020 for possession of a firearm and other charges. The charges were withdrawn on 11/25/2020 and state parole continued to keep me detained pending violation for possession of firearm. Violation hearing took place on 1/11/2021 with board decision on January 21, 2021, to recommit as a technical parole violator to a state correctional institution to serve 6 months. I served my 6 month sentence and was released on 3/17/2021. I got re-arrested on 5/26/2021 and got re-charged by the ATF for possession of the SAME FIREARM, SAME CASE and SAME INCIDENT that stem from the same day 9/17/2020. I should not be detained again by state parole being as the I already was detained and served time already for this SAME FIREARM. This is successive punishment for the same offense and I already been prosecuted for this FIREARM.

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(b) If you did not exhaust your state remedies on Ground Three, explain why: my public defender that represented ME at my detention hearing (6/22/2021) said that she would file administrative relief as long as I remained in Allegheny county. I was transferred the next day to Butler county and was unable to receive assistance

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:Double Jeopardy

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My NEW CASE which IS my indictment for the United States District court for the western District of Pennsylvania. Indictment states that the grand jury charges me with the charges from September 17, 2020. knowing Possessed a Firearm Taurus 9mm Serial Number TLO91315. (SEE indictment) clearly being the SAME FIREARM in the Swissvale police Report on 9/17/2020 being the SAME model with SAME Serial Number (TLO91315, SEE police Report. I WAS Already punished and SERVED 6 MONTHS for this FIRE ARM

(b) If you did not exhaust your state remedies on Ground Four, explain why:

Public defender that represented me at detention hearing was unable to file administrative relief due to the fact that I was no longer in Allegheny county. I WAS unable to RECEIVE assistance from Butler county.

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

N/A

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Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

Ground ONE Ground TWO Ground Three
SEE ~~sub~~ subsection 13(b) Ground four

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

violation hearing - Attorney Steven Johnston
Clearfield County public defender's office 231 E. Market Street, Clearfield, PA 16830

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

State parole detainer removed,
released from state parole detainer and no further parole violations for
this particular matter. Remove state parole detainer
or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 1/27/2022 (month, date, year).

Executed (signed) on 1/27/22 (date).

David J. General

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

